

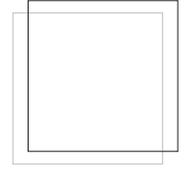
International IDEA

The International Institute for Democracy
and Electoral Assistance

Participation in Constitution Making



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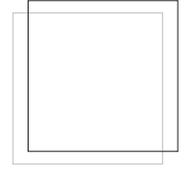
Making women voices heard



International IDEA - Participation in Constitution Making

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International IDEA
International Institute for Democracy and Electoral Assistance
Jhamsikel -3, Lalitpur, Nepal
Tel: +977-1-5535252, fax: +977-1-5535252, website: www.idea.int

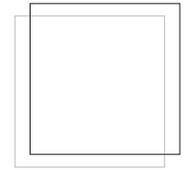


About The Contributors

This paper is authored by Jill Cottrell who is the Senior Advisor to the Women and Constitution building initiative at International IDEA.

Jill Cottrell has previously been a consultant on constitution making in East Timor, Iraq and Maldives, as well as in Nepal where she has worked with UNDP as well as on other projects for International IDEA.

The paper is edited by Cecilia Bylesjö who is working as a Gender Advisor of the Women and Constitution Building Initiative at International IDEA. She has previously worked with democratic processes and gender in Indonesia, Malaysia and Ethiopia.



About The Initiative

"Constitution building is a key component of democratization and conflict management in divided societies. International IDEA supports inclusive and participatory constitution-building processes that result in constitutions with the following features: they are nationally owned, sustainable and sensitive to gender and conflict prevention dimensions. Constitutionbuilding processes with the above characteristics use dialogue to allow participants in the process to formulate long-term solutions and address their own democracy challenges. These may arise from deep political divisions, serious conflict, the denial of political participation, violations of other human rights, or from the failure to improve the quality of life for ordinary citizens. The voice of citizens is critical to the process due to the need to accommodate all legitimate perspectives if support for constitutional reform is to be achieved." (www.idea.int)

The Women and Constitution Building Initiative in Nepal was initiated (June 2008) in the spirit of a newlyformed Constitution Assembly (CA) which saw the election of a high percentage of women. International IDEA, together with its partners, identified a need for a greater understanding of how a constitution affects women's lives and how women can contribute to the process of making a new constitution. Strategies were needed to support the creation of an inclusive political environment in a crucial period of Nepal's history.

The initiative aims at: (1) Developing knowledge resources to support a gender inclusive process and a gender sensitive constitution, (2) Establishing a connection with international experts (cross-party and across all age groups) and, (3) Facilitating dialogue between key stakeholders working on constitution building with a gender perspective.

A Gender Folder: Toolkit for Constituent Assembly Members creates the core of International IDEA's Women and Constitution Building Initiative in Nepal and will disseminate discussion papers throughout the constitution making process with the aim of highlighting significant issues related to the constitution from a gender perspective.

The discussion paper topics are identified by a national group of experts. These focus on the following topics: agenda setting, rules of procedure and public participation. Expert groups with the ability to draw on international expertise are established at the national level. The member represents CA members, political parties, lawyers, civil society and academicians. These groups both draw on and inform International IDEA's gender work.

The national expert groups also conduct round tables and seminars which meet the immediate needs by addressing 'hot' topics that arise in the process of making a new constitution. The round tables and seminars are hosted by national and international experts and invite professionals working in this field to participate.

The initiative will be conducted throughout the constitution-building process in Nepal (2008-2010) and will be implemented in collaboration with international and national partners. The International IDEA project in Nepal is supported by the Royal Norwegian Embassy and the British Government.

For more information about the Women and Constitution Building Initiative, contact:

Cecilia Bylesjö

Gender Adviser

International IDEA

Kathmandu, Nepal

Phone: +977 1 55 35 252

Email: c.bylesjo@idea.int

Leena Rikkilä Tamang

Head of Mission

International IDEA

Kathmandu, Nepal

Phone: +977 1 55 35 252

Email: l.rikkila@idea.int

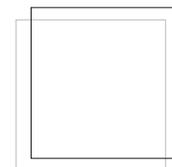


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*‘The people of Nepal shall prepare their Constitution through the
Constituent Assembly.’
Interim Constitution of Nepal (2007)*

Part I : General*

In this section we discuss the idea of public participation (which as we use it the phrase in this paper includes full participation by the CA members themselves – whose function is to represent the public). Later sections look at the specific role of the CA members (Part II), and the participation of members of the community outside the CA (Part III).

What is involved in making a constitution – and where do the people fit in?

A constitution is a document that reflects and conveys ideas – about government, rights, and the place of the people in society – putting them into a legal form. You might think of it as a five stage process (though they will not happen exactly one by one):

1. Asking what we want to achieve through this constitution,
2. Examining the institutions, processes and rules in a constitution that might achieve this result,
3. Selecting the most appropriate for the needs of the particular country,
4. Putting these ideas into an overall structure,
5. Finally: making sure that the legal language conveys the intended meaning, is clear, not ambiguous, and not vague.

Stage 1 is likely to involve the expression of ideas such as:

- Democracy
- Inclusion
- Basic needs
- Fairness

* Working draft

Everyone in society can be involved in this stage. Many people will know what they want – and what they have not got in the past. They need not know a great deal about a constitution or how it works in order to have useful ideas about this aspect.

The final stage is very much one for legal drafting technicians. This does not mean that other people are not at all involved: it is important that the people, the lawyers, and the CA members understand the final document and accept that it reflects what they want, and what they have decided. But it makes no sense for ordinary CA members to insist on deciding the actual words and the placing of punctuation. Further understanding of this stage can be enhanced by advocacy and public discussions. This will raise the awareness of this ‘new document’ and create a sense of ownership. It also lays the foundation for future legislation and policies that are to be developed taking the new constitution into consideration. CA members, politicians and civil society could take this period as an opportunity to work with the public and prepare for the implementing steps to follow the process of making the new constitution.

The other stages involve a mixture of expertise, experience and common sense. *Stage 2* may involve considerable input from experts – about what the existing constitution says, how it or its predecessors have worked in the past, what other countries have done and even what might be possible even if other countries have not done it. *Stage 3* is one for the ultimate decision of the CA itself – informed by the views of experts and the public. *Stage 4* requires considerable expertise from constitutional lawyers and political scientists and from people with practical political experience – all the time being watched by the non-experts.

Inclusion and participation

Ever since Jana Andolan II the talk has been of “inclusion”. We are now concerned about the constitution making process. Are women included there? If we look at the make-up of the CA we find that 197 of the 601 members are women. Women’s organisations had been arguing that, since women are about half of the population, about half of the CA members ought to be women. Whether this is a good argument or not, the CA is now elected and working. Our concern is with how well it works in the interests of the people of Nepal, especially the women of Nepal, as it makes the new constitution. Would you agree with the following comment:

- However many women members there are of the CA, the interests of women will not be fully protected in the new Constitution unless those interests are properly expressed, and taken seriously?

This discussion paper is based on the assumption that the way to ensure that women’s interests are protected is by more than inclusion – it is by participation. Or perhaps we can put it a different way: *that real inclusion needs participation.*

Whose participation are we talking about? Obviously the participation of the women members of the CA is very important. There is no point at all in having any women members if they remain silent spectators of a process carried out by men. The women members must play their full part in the work of the CA. But for various reasons the participation must go further: the people of Nepal should be actively involved in the process of making the constitution. They have voted for their members, but they must not now sit back and wait to see what those members do. This paper explores why and how this active participation of the people outside the CA is to be achieved. The people of Nepal are

not just 26 million or so individuals. They are organised, and they can be organised in new ways to be involved in the constitution making process by participating in the public discussion and actively preparing for the public view collection. We are talking about the involvement of the people through a whole range of civil society organisations and community based networks. Some individuals are involved in various organisations: religious groups, political groups, professional groups, groups concerned with social issues, perhaps even groups sharing sporting interests or certain other hobbies or interests. Individuals too should be able to participate.

Even the active participation of groups within society is not enough. The final decisions on the contents of the new constitution are to be made by the CA. If necessary, there will be voting. CA members must be persuaded about the provisions to ensure that the new Constitution meets the needs and the expectations of Nepalis. Women members alone cannot pass provisions that benefit women, any more than Dalit members alone can introduce provisions to benefit Dalits.

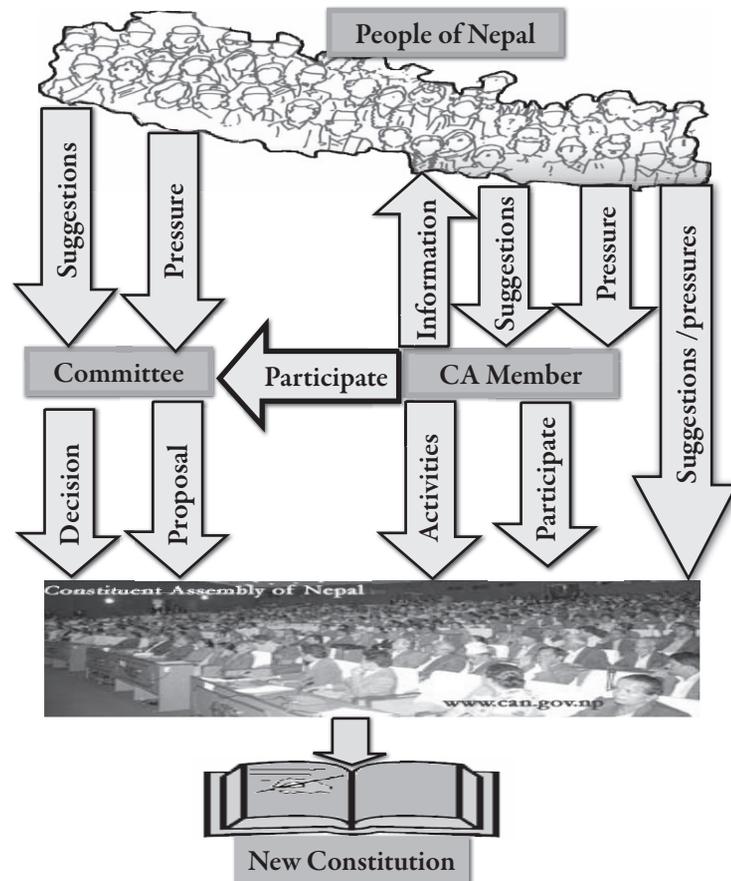
What is participation?

All sorts of activities can be participation, including even watching and listening. It is important that CA members do not think that if they do not have something special to say, or are not going to have the chance to speak in a CA session or a committee meeting, there is no point in being there. Passively watching and listening is not really participation, but thinking about what is being said, learning from it, preparing to argue against it, and preparing to use what is heard and thought about when it comes to voting are all active participatory activities. And even the members of the public are in a way participating if they follow what is happening in the CA, think about it, and use what they learn in their lives as active citizens of the country. But when we talk about participation we generally have in mind something rather more active.

Who are participating?

First let us think for a moment about the various people and groups involved in the making of the constitution and the relationship between them (see figure below):

- The member informs the people
- The people make suggestions to the member
- The member participates in committees
- The member participates in meetings of the whole CA and other activities
- The public make suggestions to the Committees
- The public make suggestions to the CA as a whole
- The public put pressure on the CA and its members and committees
- The committees pass their decisions/proposals to the CA
- The result is the new Constitution of Nepal



Of course it is much more complicated than this. We could say that all the following are ways of participating in the work of making the new Constitution:

Members of the public participate by:

- Taking part in discussions of groups of members of the public, or of a specific organisation that is developing suggestions to put to the CA, or is preparing to comment on suggestions made by the CA,
- Interacting informal or in formally arranged meetings with one or more CA members on matters relevant to the constitution,
- Preparing formal submissions to the CA or its committees,
- Writing a letter to the CA, a committee or a member about the constitution,
- They may participate by demonstrating: in fact various groups have already participated by bandhas, and even by violence, (this paper is not recommending all these methods, of course)

The media participate by:

- Spreading information about the activities of the CA,
- Giving publicity to the views of individuals and groups about the constitution,
- Expressing their own views about constitutional issues.

The media have an important role whether or not they have formal accreditation to the Assembly. Indeed, there may be a risk in some countries that formally accredited media will find it more difficult to express their views frankly – in which case the other media have a special responsibility to give alternative views when appropriate.

Why participation of the public?

It has been suggested that international law give people the right to participate in making the constitution of their country. The International Covenant on Civil and Political Rights Art. 25 (which Nepal has signed) says that:

- Every citizen shall have the right and the opportunity, without any of the distinctions such as race, sex etc, and without unreasonable restrictions:
- To take part in the conduct of public affairs, directly or through freely chosen representatives.

The United Nations Human Rights Committee has said that “People have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government” and “Citizens also participate directly in the conduct of public affairs when they choose or change their constitutions”.¹

Why is the job not just left to the CA?

The people have freely elected their CA members – who have the job of making the new constitution. Why is it important that the public are involved?

Even though the CA is very large, it cannot reflect all the views of the people of Nepal in the new Constitution. Making the constitution is a complicated task, and it is important that as many ideas as possible are fed into the process, in order to ensure that the constitution really meets the needs of Nepalis, and is the best constitution possible. The constitution and the process of making it are part of a wider national project: this has been called “restructuring the state”, or building a New Nepal. Some people have described it as part of a process of “nation building” – responding to the demands of the people for a system that is inclusive and just. Nation building is a process that involves the minds and the hearts of the people. If they are involved in the process of making the new constitution, this is likely to mean that they feel more of a commitment to the nation, and the new constitution, as well as to their own community within the nation.

The recruitment of members to the CA was largely a matter for the political parties. Parties prepared manifestoes setting out their views on the constitution. But it is clear that many parties did not

¹ General Comment on Art. 25 of the Covenant, (1996).

have a very clear set of ideas about the constitution. Constitution making is very new to many politicians. Public input will help introduce a wide range of concerns that may not be clear especially to Kathmandu based politicians, and this will develop the parties' ideas. Active involvement is of particular importance for women. They have an interest in continuing to be represented at the national and local levels, to have access to decision making positions and to ensure that the gains they made in the CA elections are maintained.

Box: Can't the women CA members represent the women of Nepal?

It would perhaps be understandable for CA members, who have been elected by the people, to feel that their function is to represent the people, and even to wonder whether it is necessary to have direct public involvement and contact with the CA. Perhaps there are a few CA members who feel this way (or perhaps party leaders more so). But clearly the CA members do not generally feel this way because they have provided in the rules for public consultation – an extensive process that began in late February and earnestly lasted through out March 2009. Direct public involvement does not diminish the role and importance of the CA members. It is very much their function to represent the views of the people. But there are various reasons why that representative functions should be supplemented by public input – both through the CA members and:

- CA members are party members; but making a new constitution cannot be just a matter of party positions (after all, even the role of parties is a matter for discussion)
- Most CA members are not very experienced in constitution making; this is in many ways a good thing (it means they are not so much people with a vested interest in particular constitutional rules) but it does mean that they can benefit from input of their fellow citizens
- Sometimes members of the public may hesitate to put forward views to or through CA members – because of gender, class, caste, language or party differences
- Some of the benefits of participation in constitution making cannot be achieved so readily by indirect participation
- Experience shows that even well informed people learn a great deal by actually travelling and interacting with people at the grassroots level in their society: we are all to some extent prisoners of our backgrounds, education and of where we live.

It will be far easier to achieve this if they are actively involved in the whole process, influencing the CA decisions and simply demonstrating that women are interested and are capable – and thus deserve a place in the system being designed by the CA.

It is also a good thing if the people feel a commitment to the constitution. The constitution will give them rights, and it will give them responsibilities. The more involved they have been, the more likely they are to accept the responsibilities, and to try to gain their constitutional rights. In other words, they are more likely to try to make the constitution work. They are also likely to be more knowledgeable about the constitution, including the institutions created for their protection – including such as the courts and human rights commissions. And they will be more knowledgeable about the whole democratic process and hopefully support a democratic development in the country at all levels.

There have been many criticisms of the 1990 constitution. Not all of them are fair. But it is clear that many people feel that they were not involved in making that constitution. Involving the people in making the new constitution may help Nepal to avoid some of the mistakes that were made when the 1990 Constitution was prepared.

Other reasons for encouraging participation are that it may introduce into the process, and the new constitution things that are of importance to the people but tend to be overlooked by lawyers and politicians. Politicians do not generally support changes that reduce their powers (like provisions to regulate political parties, or to recall non-performing members of parliament). Lawyers may not understand human rights, or some aspects of human rights (such as socio-economic rights) and they may be over-affected by their own, narrowly national, legal education.

Methods of participating in a constructive way, giving the people the feeling that they are having the opportunity to influence the form of the constitution may help to avoid the less constructive types of participation such as bandhas, mentioned earlier.

When should the public participate?

There are various stages during which members of the public may be able to participate. In some constitution making processes the views of the public have been collected before any draft constitution was prepared. In other countries, a committee has prepared a draft and then the views of the public have been sought. And sometimes both these things have happened (see the brief account of the Kenyan process in Appendix II). From the point of view of the individuals and groups who make up “the people” more chances to input ideas means perhaps a greater chance of finding those ideas reflected in the final constitution. But if those individuals and groups are well organised, and have clear proposals to put forward, and are able to put those ideas across, even one opportunity may be sufficient.

Under the Rules adopted by the CA in Nepal (which include the Schedule of activities) the main formal opportunities for the views of the public to be sought occur at three stages: right at the beginning when the CA secretariat was to “invite and request members of the civil society and the general public through mass media for their suggestions and participation in constitution making”, through a public view collection stretching over a month which also encouraged people to submit their submissions to the CA, and on the first draft to be prepared by the constitutional committee anticipated by September 2009. The first round of public view collection included:

- a) Honourable members to return to their respective district, constituencies, and various parts of the country, and collect people’s opinions, suggestions.
- b) Extensive discussions and interactions with people regarding the constitution by organizing seminars and public hearings.
- c) Collection of information through questioners created by each substance committee and published by the CA secretariat.
- d) Compilation of all the suggestions that may come from different sources.

Box: Public view collection in Nepal 2009

With an aim to make a new constitution based on people's aspirations, the public outreach programme was launched in 27 February 2009 (Falgun 16 2065) and lasted for a month. The CA Secretariat urged members of civil society, experts and the general public to give their suggestions and views on the concept of the new constitutions. The CA members were deployed all over Nepal with the aim of collecting the public's views regarding the new constitution. This process was facilitated by the Public Opinion Coordination committee and supported by local administration in each district and VDC.

A total number of 40 teams were assigned to conduct the public outreach programme in the field, each team including 15-18 CA members and 4-5 officials of the CA Secretariat. The exercise aimed at including public discussions, mass consultations and to collect opinions from the people through the questionnaire developed by the 11 substance committee in the CA. Each set of questionnaire included 290 questions, with both open ended as well as multiple choice question-structures. The teams visited selected districts with a compiled set of questionnaire to facilitate the process of feedback collection which were prepared by the eleven Thematic Committees of the CA.

In general the reports from the media and CA Members has been that the public has welcomed the CA Members visits and participated actively in the different interaction programmes held around the country. However, the CA members also reported on the challenge in convincing people that they were to collect their views and make sure they brought them back to the CA, that this was not the job of the CA members but rather a consultative process where participation was the key. Other challenges reported mainly included the technical language and length of the questionnaire, logistical difficulties, and to some extent security problems including bandhs and occasional rioting.

The process of collecting the public views and submissions, and to process and analyze the material gathered including preparations of the preliminary reports of different thematic committees is expected to be completed by 22 April 2009. The second phase of public consultation and outreach will be based on the first draft of the constitution. This exercise which will be coordinated by Public Opinion Coordination Committee which according to original CA schedule of November 2008 is scheduled for September to December 2009. It is expected that the lessons learnt from the first phase of public view collection will be inserted into the planning of subsequent steps in the constitution building process.

While it is too early to assess the overall success of this multi-tired exercise there is a need to acknowledge the very fact that many hundreds of CA Members took the opportunity to visit the districts and conduct interaction programmes with the people. The scale, operative ability and creativity to overcome hurdles and obstacles all points in a very positive directions for the constitutional process and next steps to come.

Box: Provision for Public Input in the CA Rules: the Committees	
Committee	Function
1. Committee on Citizens Relations	<ul style="list-style-type: none"> • Establishment of a channel for citizens' easy access to the Constituent Assembly, including its functioning. • Provision for an effective information system tasked with informing citizens about the Constituent Assembly, the Constitution-building process and its general activities, together with coordination with concerned agencies. • Monitoring and evaluation of all activities conducted by government agencies, NGOs and INGOs, civil society, media, regarding Constituent Assembly, Constitution-building processes and their general activities. • Informing citizens on the process of participation in the formation of the [Constitution]. • Monitoring of the media centre.
2. Committee on the Collection and Coordination of Public Opinion	<ul style="list-style-type: none"> • Collection of public opinion and suggestions on the draft Constitution through various communication media. • Public hearings on the draft constitution. • Organization of seminars and workshops and interviews. • Documentation of suggestions obtained through various means, either from individuals or organizations from domestic or foreign countries. • Preparation of a report consisting suggestions, to be forwarded to the [Constituent] Assembly.

The functions of the first of these committees, especially, seem to include a continuing process of informing the public, and perhaps allowing the public to contact the CA.

Are there any disadvantages to participation?

It would be rather easier to write a new constitution for Nepal – or any other country – if a small group of legal experts could sit down in a room and prepare a document without having to bother about the people and their views. Some people think that making a constitution is just a technical matter and that the people have nothing to offer – or that they, the experts, know everything that the people will want to tell them anyway – so why waste time consulting the people. Political parties may think that all that is needed is for parties to sit together and negotiate the details of the new constitution. There are also different views about what should go into a constitution. There is no one right view of the contents of the constitution. Some people argue that it should be only about the structure of government, and probably human rights. Other people think that the modern constitution reflect a vision of the nation and of the hopes of the people for the future, the latter view will produce a very different sort of constitution.

Once the decision has been made to have considerable public input, it is almost inevitable that the resulting constitution will be longer and more detailed than an “expert” drafted document would be. On the whole the underlying assumption of this part has been that this is what will – and should – happen in Nepal. But it is unrealistic to ignore what may be the problems or even the disadvantages of public participation. So here we confront the main issues.

Ordinary people feel most strongly about issues that are perhaps not the most central to a constitution and may be satisfied with wording that sounds good but is not necessarily legally effective.

A constitution serves many purposes – political and legal, technical and popular. Some of the more technical aspects may not strike a chord with members of the public. And it is really difficult to convey to the ordinary citizen the difference between, say, a presidential system of government, a parliamentary system, a semi-presidential system, and the various shades that combine features of more than one system. People may therefore not pay enough attention to these issues, or they may be swayed by appeals that do not really address the details and difficulties. So people may be affected by arguments that “we need a strong system of government – and that means a presidential system” without understanding what “strong” means, or whether it is true that a particular presidential system involves a “strong” president, or ignoring others important issues such as accountability. And they may be attracted by language that uses “buzz” words like “rights” or “participation” or “empowerment” and ignore the fact that there is no clear meaning (what does “empowerment” actually mean?), or there is no enforcement mechanism or that parliament can pass laws taking away a right – because, for example, the constitution says ‘subject to law’.

Debate can be hijacked by abortion or similar issues

Because of the lack of public understanding or interest, a lot of time can be taken up with things that people do think they understand. And unfortunately people are often not very tolerant about some of the things that they feel strongly about. A disproportionate amount of time has been taken up in many countries discussing gay rights, abortion, or the death penalty (even in the USA these are the current topics). But for most people in most countries that are carrying out major constitution making exercises the structure of government, regulation of political parties, controlling the budget, and socio-economic rights, are more likely to determine their life chances.

Unproductive passions may be aroused

For similar reasons constitutional discussion can be divisive. In Kenya’s constitutional process in 2002-2004 the issue of whether there should be special courts for Muslims became a very divisive issue. Yet what was finally proposed was little different from what had been the law, with no controversy, for many years. And incidents that happen during the constitution making process can spark off controversy that can threaten to derail the entire process or make it hostage to some peripheral issue.

Real people’s participation may be hard to achieve

Research in Uganda, which is supposed to have had a very participatory process, has shown that very often the people were not so much expressing their own views as those of their political and traditional leaders. Maybe this sort of participation is of some value but it certainly does not fit the image of a truly people’s process.

The resultant document may have legal flaws

Some of the things that the people may insist on seeing in the constitution may be impossible to express in ways that have real legal effect. Sometimes they may be too vague. Or they may promise things that no court could realistically deliver. It may be possible to deal with this to some extent

by putting aspirations in Directive Principles and more precisely drafted rights in other parts. But if there is too much of a vague nature this may weaken the “legal acceptability” of the constitution as a whole.

Can the “downside” problems be avoided?

Participation – of the members themselves and of the broader society is important. The risks, especially of the latter, can be reduced though not eliminated. Things that may help include:

- Trying to ensure that civic education is carried out before views are sought and carried out by competent and politically neutral bodies
- Ensuring that all groups have a fair chance to submit views, bearing in mind the cultural and practical problems that may face women, persons with disability and other marginalized groups
- Making it clear that, while the broad public should submit views, the decisions will be made by the CA with expert support
- Ensuring that most of the substantive discussion in the CA take place in committees (where members will be less tempted to “play to the gallery” because there will not be a large audience and media may not be present), and where they may be more prepared to listen to other views and to change their minds
- Identifying experts (lawyers and political scientists etc) who understand constitutional issues, are familiar with recent developments in other countries, and do not take too traditional a view of the appropriate scope for constitution, but also have a good sense of how constitutions work in practice, both politically and legally
- Ensure that public views are taken seriously, properly processed, included in a report, with explanations of why certain views were not adopted
- Identifying legal drafters with exceptional skills in translating ideas into legal language, creatively.

Part II: Participation as a CA member

What should or can the CA as a whole and its Secretariat do to make women members' participation effective?

CA members themselves will perhaps have the main responsibility for being effective in the CA. But there are ways that the CA as an institution, the political parties that are so important in the way it is run, and the Secretariat, can help members, and some ways in which women especially can be helped.

- The Rules of the CA should be drafted in a way that makes effective participation easier to achieve, and there are some points that may be particular to women.
- Facilities need to take account of the needs of women, and other groups such as members with disability (including mundane matters such as stairs, sanitary facilities and child care).
- Safety of women and other members with particular vulnerabilities must be taken into account. Violence was an issue in the CA elections, and this may deter women candidates more than men. Political violence has not ceased, and some CA members have found this interfering with their public consultations. The CA as an organisation, and the parties, have a duty (certainly a moral duty and also a duty because of their responsibility to fulfil the promise of the Interim Constitution) to protect members as far as possible so that they can do their job. This may involve liaising with the police, and perhaps even with dissident groups, to try to ensure that the public can participate. Venues must be safe, transport may have to be provided – for the public as well as CA members.
- If more women in the community are illiterate, it is especially important that efforts are made to communicate with them through radio and other means that do not require literacy. And programmes must be at times that women will be able to listen (not collecting water from distant streams).
- It is very important to ensure that communications with the public is in a language they understand – using “language” here to mean not just using Bhojpuri or Limbu and not Nepali if people will not understand the latter, but also referring to simple styles of communications (not simplistic, but avoiding unnecessary jargon or complex phrases).

How can the members themselves strive to be more effective

The CA members have been elected to make the constitution for the people of Nepal and, as this paper suggests, in consultation with the people of Nepal. It is therefore very important that members think seriously about how they can play their full part as CA members. It is not enough to be present or even to vote. Participation by the members means more and entails:

- o Listening
- o Thinking
- o Questioning
- o Learning
- o Speaking
- o Voting

Listening

Some people go to meetings only to speak and not to listen. It is also important to understand what the point of view of others is. Even if you do not change your own mind, it will be much easier to reach agreement on a constitution (and the Interim Constitution tried to ensure consensus on this) if everyone understands the point of view of others. And sometimes you may find you do in fact change your own mind because you understand the point of view of others. Listening should be active and positive: listening to understand, thinking about what the other person is saying, and not listening just to be critical and find fault with what the other is saying.

Thinking

Every CA member has experience and knowledge that is relevant to making a new constitution. Perhaps they do not all realise this. But some may think that they can contribute only in connection with certain topics. Maybe Janajati members tend to think only about janajati issues, or Dalits only about caste issues etc. But every member has many identities and many experiences: everyone is a citizen, a man or a woman, belongs to a geographical place, has certain views about their own business or occupation, probably has a religion, has knowledge about human needs and human psychology, knows something about human effectiveness, and has had experience about the running of government as a participant or a recipient (a pupil in school, a patient at a clinic, a person waiting for a licence etc). The wealth of that experience should be brought to bear on the constitution making tasks by every member. It is not that every member will become an expert on every aspect of the constitution. But the constitution is being made for every Nepali: one of the tasks of the CA members is to test the suggestions against their own intelligence, experience and common sense. If the constitution does not make sense to them – how will it make sense to their fellow citizens?

Questioning

Questioning can be an internal activity and an external one. Internally it is part of the thinking process: “Do I understand what that person is trying to say?”, “Am I right in what I think about....?” – ensuring that nothing is accepted just because of who says it, but that everything is exposed to the test of one’s own questioning. And externally it means actually asking questions of others: to make sure that you understand what they are trying to say; to test what they are saying to see whether on further exploration it makes sense, and can be supported by facts and experiences; and questioning is a way of expressing disagreement which does not need to be aggressive. The questioning will go on with groups in the CA – in parties, caucuses, and among friends.

Learning

There will be CA members who think they do not need to learn. And some CA members who think they have everything to learn. Neither position is correct! As we said earlier, every member has relevant experience and knowledge. And no member knows everything about making a new constitution. That may seem a bold statement. But even constitutional experts are constantly learning. Experienced politicians do not often think in constitutional terms (more often in terms of bargaining than in terms of principles and rules). CA members can perhaps think of themselves as undergoing a sort of advanced course in constitutions – and behave as students would do: set aside time to think about the issues, form discussion groups (perhaps women might form small groups among themselves in which they can discuss in private without feeling that they are exposing themselves to criticism), and read the material they have requested and been given. There is probably too much material, so members could share out the reading among members of discussion groups, assigning each member to read something and report back to the group. This could be arranged in the informally among members but also adopted as a working method in each of the committees.

Speaking

The purpose of speaking is not (i) for the pleasure of knowing that you have spoken or (ii) to convince your party bosses that you are being a loyal member. The time available is too limited.

The purpose of speaking should be to persuade: to convince the listeners that what you say makes sense. Your point should be clear, there should be supporting arguments, your manner should be persuasive not bullying; you should stick to time limits (less if possible) – every speaker should think that if they use one minute more than the time allowed someone else is losing one minute. The most difficult thing for many people is to be relevant: if the discussion is about whether to have a presidential or a parliamentary system, do not talk about unfair discrimination against your community (unless it is relevant, of course).

Box: Relevance

For many people involved in making a new constitution, the concerns of their own community or group are central and must therefore be relevant to everything. They are right that every aspect of the constitution is relevant for everyone. But it is not true that the particular circumstances of every group need to be aired in connection with every constitutional issue. If you raise particular concerns at every opportunity, you risk having them ignored when they are most relevant.

Speaking is something that will take place in the full CA, in committees and in more informal situations. It is unrealistic not to recognise that what happens inside parties and in informal groups is very important. In fact it may be more important that members interest with their party members to influence the party view on issues, than that they speak in formal meetings. Strategies on who and how to lobby must be developed by women in parties and cross-party to be able to argue successfully for gender equality being built into the constitution. Collaboration is the key and should be used when opportunities arises. Women need to join forces to make sure that they as a group are not ignored in the new constitution.

Voting

The right to vote in the CA is a privilege. It is not to be sold - and it has happened in some CAs that members have allowed themselves to receive benefits to vote in a certain way. This is a form of corruption, and members should be very careful not to be tricked into accepting such benefit. And the vote is not to be exercised blindly on party instructions. Party loyalty is important but it should be thinking loyalty. Though the CA Rules as adopted do not say anything about voting on matters of conscience, parties will not insist on party loyalty on every issue. Before voting, perhaps each member should ask him/herself a question: "If someone asks me why I voted like this, what would I say?"

How CA members can encourage the participation of others

The CA members have been given a heavy responsibility: making a new constitution is a very important process in the life of any nation. No member can understand all the issues. The participation of members of the wider society can help the CA members to carry out this responsibility.

- How to help women understand how the constitution will matter to them? To their community? And to the nation?
- How to help women understand what a CA is?

The contribution of women in society will be more useful if they have some understanding of what a constitution is, and what the job of the CA is. But it is not realistic to expect everyone to understand the role of a constitution in any detail. Many people will not have a very clear idea even of what government is. In fact one of the complaints of Nepalis has been that government has done very little. The question is, what would you like government to do more? It is not necessary for the public to draft this into legal language but to identify what they expect from the government, and from public institutions, and what they expect from you as a CA member.

Therefore it is probably more useful to discuss with the people what they believe government ought to do, and how it ought to operate. It would be fair to explain that it is not possible to put into a constitution a lot of detail about the specific tasks of future governments. The constitution will mainly about the organisation of government and not about what it does. But the constitution can have some broad principles of fairness in government, and about its duty to work towards a just society. And many of the institutions of government should be designed to make sure that government does operate fairly, without corruption, and with the best interest of the nation in mind.

For audiences and groups that do show some interest in the nature of a constitution, it might be helpful to ask whether organisations they are members of have constitutions. An NGO ought to have a constitution, which will probably decide how the President of the organisation is chosen, how the committee members are chosen, what the responsibilities of the different members are, how the money is taken care of, and how people can become members of the organisation. The constitution of a country is similar – but deals with more issues and is of course more complicated. In Appendix 2 you will find a list of questions that it might be helpful to ask people.

For women who are not members of any organisation, perhaps you could ask about their family's constitution. Who decides important things? Who keeps the money? (See Box: A conversation about constitutions)

- Working with committees to get them to take submissions seriously

It will be a pity if many groups and citizens put forward submissions to the CA but they do not get discussed properly. CA members could encourage citizens to share copies of their submissions with the members. Then the members can talk to the chairs of CA committees, and to other members, and explain the importance of the suggestions made.

- Role of members of the committee charged with getting public input

Some CA committees will be particularly involved in collecting the views of the public. Members of these committees should think particularly carefully about how to ensure that the public feel free to express their ideas. They should also ensure that there is a system in place to analyse the public's submission, and to ensure that the CA and the committees making decisions about the new constitution are able to read all the suggestions of the public. They will work closely with the CA Secretariat on this. (See Box: Dealing with a mass of information)

- The member and her constituency – as far as public participation is concerned.

All the CA members elected for a geographical area have constituents. These are all the people of that area – and not just those who voted for the member. It is the responsibility of the member for an area to keep in touch with the people, and be a way of taking the views of the people in that area to the CA. A member should try to visit the constituency reasonably often and set up a system under which people can have contact and put forward their ideas and their problems. A CA member is also the channel of information to the public and should act responsible in informing its constituency about the process and the ongoing discussions.

The CA members are also members of the Legislature-Parliament, of course. And they should also be prepared to listen to the problems of their constituents, and if suitable put forward points to government departments, but this goes beyond the scope of this paper.

In fact, there is a connection between the two roles of a member: it is very possible that a member of the Legislature will realise that some problem experienced by a constituent shows a problem with the working of government. The problem may well be best addressed by something in the new constitution – rather than as a matter of current government policy.

In a poor country like Nepal, it is common for members of parliament to find that they are expected to give money to their constituents. They may even become afraid to go there, because the demands and pressure are becoming difficult to handle. Members must be aware of this problem, and be very firm. They have not been elected to distribute money to individuals but to represent the people. They have a job to do, and they must use allowances for that purpose, and their personal salaries must not get mixed up with the professional job. They should make it clear from the beginning that they will not be handing out money, and should be careful not to behave in a way that will allow anyone to suspect that they have given money. If there is a public fund raising for charity they can participate – but it should always be clear that they are giving money from their personal funds and not money that is intended for a public purpose.

How about the “List members”?

They do not have constituencies in the same way. But many of them were selected by their party to represent a particular section of society (because this was how the Election Act worked). So they can view themselves as representing that group within society (for example Dalit women). But they should not forget – no-one should forget – that there are groups in society who do not have “their own” members. If all list members represent only people like them, who will represent persons with disability, for example?

Both types of members should find time to act as “ordinary legislators” – that is not just as constitution makers. In this way they will be able to contribute from their person experience to discussions about the appropriate electoral system for the new constitution.

Box: A conversation about constitutions

Imagine a village where people have been asked to make suggestions to the CA members about the new Constitution, but they realise they don't know much about constitutions at all. Part of the conversation goes like this:

Woman A: I have been thinking about families: in my family we have rules. I cook (my husband would die rather than set foot in the kitchen); I collect water. My husband goes out to work [or to the farm or whatever is the common male activity in the community]. My children have to do their homework when they come home from school and must not be late to bed. Is that our Constitution?

B: Who makes these rules? Your husband?

A: Actually, I suppose he makes the ones about work, and money. I make the ones about the children and their bedtimes and their homework.

B: How did that happen – this dividing the rule making?

A: My husband! When we got married he said “We shall be very happy if you cook and don't interfere with my work and I don't interfere with the kitchen, and you take care of everything about the children”.

C: I think the Constitution in your house is that the Government is the husband, and he has given you the power to make some rules.

F: Or maybe the Constitution is the agreement and that splits the powers of government between your husband and you.

B: And see how the Constitution that does this was made by the husband without consulting the other person in the family – just how many countries' constitutions have been made!

B: How about money?

A: If I earn anything, I don't have to give it to my husband, but he expects me to spend it on the children, then myself, and only to ask him for anything if I need it.

B: Is there any way to keep you both honest about money?

A: I tell my husband what I manage to earn. Usually he tells me what he has earned.

D: And if you don't do what your Constitution says you should do, who would make sure it happens?

A: My husband!

D: And if he doesn't do his bit – like he does not work – what happens?

A: I complain!

F: And does it work?

A: Not usually.

B: Sounds as if your family Constitution is no better than the country's Constitution!

A: That's not fair – my husband is quite good, and anyway I bet your house is no better.

B: I think most of our house constitutions are no better!

A: If things are really bad I might get my brother to talk to my husband or even get my family to talk to his family.

C: They seem to be the house Constitution enforcement machinery! In a country you would have the police and the courts and other things

Thinking about the consultation process

The committee on the Collection and Coordination of Public Opinion has special responsibility for planning for this. But, as we have seen, CA members may find themselves in a 'consultation situation' at any time. People may come to see them; when they visit their constituencies they will have meetings on the constitution. How should they handle this? Or even how should they behave in programmes organised by that committee? Here are a few suggestions:

- Try to resist the temptation to talk too much (indeed maybe do not talk at all other than what politeness requires!). Remember that people may be deferential to you, and there is a risk that if you express any opinion they may be reluctant to express their own.
- Remember that some people are almost always more reticent than others; women may be especially so (see Paper 2 on Constituent Assembly Procedures from a Gender Perspective). Be prepared to protect those who may not be so ready to speak, if necessary even arranging special meetings for them. And some people may become combative in the presence of others.
- Be especially careful not to react to the opinions of others – express neither pleasure, surprise nor disagreement.
- Though there is a CA committee with special responsibility for public outreach, each CA member should view him or herself as part of that process – transparency should be through you.

Part III A pro-active approach for those outside the CA

Introduction

If you are not a member of the CA, how would you go about trying to ensure that you can put your view forward?

- If you are invited to put forward a submission – maybe by a committee of the CA

You will perhaps be allowed to present a written submission, or make an oral presentation, or both. It is important to be well prepared, to make the most of the chance. And be careful to be relevant – deal with the matters which you are invited to address. But be prepared to point out that there are other dimensions to the problem as well, if this is true. If necessary press for another chance to deal with other issues – see next point.

- If no-one asks you/your organization

If you are not asked – don't give up. If you have something important to contribute to discussion on the new Constitution, you should work hard to get your views considered. The first thing is to understand the Rules of the CA, and what possibilities they provide for formal submission of public views. In the case of the Rules of the CA for Nepal (look also at the Schedule for the work of the CA which is to be treated as part of the Rules) you will find that there are some specific points at which it is anticipated that the public will be invited to give their views, according to the CA schedule:

- Early in 2009 when CA members are travelling to collect views
- When the first Draft of a new Constitution has been adopted in principle by the CA – there will be the following schedule:

September 2009 The CA will give final touches to the first draft of the constitution and it will be published in the gazette for public reactions.

11 to 16 Sept 2009: The random sampling and coordination committee will prepare its work plan for collecting public opinions on the first draft of the constitution

September 17 to December 10: Public hearings, seminars and interactions on the first draft will be held.

But, the rules are not all. If you find, after giving the rules a fair chance, that they do not give you the opportunity you need, then you can think about other ways to get your ideas into the CA. You might consider the following tactics:

- invite your member of the CA to come to a meeting with you (this is especially suitable if the issue affects your area particularly)
- invite a number of CA members together to a meeting, especially those who have an interest, perhaps even from different parties
- approach other members of the CA, perhaps even trying to have someone in Kathmandu for some time, to “lobby” members, especially while the issue is being discussed in a committee or in the plenary
- use the media to affect public opinion (CA members will also listen to the radio, read newspapers and watch tv)
- hold dignified public meetings: not designed to disrupt other people’s lives, but to make it clear you have something to say and you need the CA to listen (this should be used only if other tactics fail as it may mean your views are dismissed, because you are seen as “trouble-makers”!
- put together a small, easy to read, publication that can go to every member of the CA (but be warned that they will be receiving hundreds of things to read!)
- get together with other groups with similar interests.

Lobbying individual members

“Lobbying” means trying to persuade someone. Here we are talking about trying to persuade members of the CA about a particular provision that you suggest should be in the new Constitution. Things to bear in mind when lobbying CA members are matters of common sense really. Here are some points that may be helpful:

- Choose the member or members to lobby carefully. There may be no point trying to persuade someone who is a well known ‘hard-line’ opponent. On the other hand, if the member already is sympathetic and has all the material, there may be no need to lobby and you would be wasting their time, and yours too!
- Find out what the official view of the party of the member is (maybe there is no view on some issues)
- Find out useful information about the person or persons you are trying to persuade – what are their interests, possible biases etc?
- Be prepared with all the facts and arguments
- Be on time
- Be polite and patient
- Remember that you are trying to persuade – be persuasive, using a little emotion perhaps, and useful information for the member
- Be brief – in speech and writing

- If the member asks a question you can't answer, be honest, promise to supply the information later – and do so!
- Send a note after the meeting emphasising the main points, and thanking the member for the meeting

Suppose you represent an “unpopular” cause”?

It may not be difficult to persuade CA members to take an interest in some topics. Children's rights, for example may easily get a hearing. Children have an emotional appeal for everyone. And few people feel threatened by them. But some issues are far harder. Even some children's rights are less easy to find supporters for – it is not so easy to find people prepared to support the idea that children's own views must be taken into account.

But there are more difficult tasks. It may not be easy to find people interested in rights for widows. And it may be even more difficult to get a hearing for the rights of sex workers, or for certain forms of affirmative action. Sometimes even privately sympathetic CA members may be reluctant to come out in public as supporting some causes – or their political party may have a “party line” that is opposed. Possibly this moment in Nepal's history may be the best ever to get some of these causes mentioned, because of the stress on “inclusion” in the movement since 2006.

Even if you do have a difficult task, there may be ways to raise issues. For example:

- It may be necessary to take a long-term view: even if it is impossible to get a particular provision in the constitution explicitly, it may be possible to introduce a broader provision that, when the time is ripe the courts or the government can use to introduce the approach you want. In South Africa it was impossible to get agreement on the abolition of the death penalty. But not long after the constitution came into force the Constitutional Court held that the right to life meant there should be no death penalty. This technique may have unpredictable consequences, of course. And there is always a risk that if you draw too much attention to your long term aim, unsympathetic groups may try to get the constitution drafted so that it excludes your ultimate aim! In Kenya the draft constitution (not adopted) of 2004 explicitly barred gay marriages.
- It may be possible to use international experience. This is something that has to be done with great care. It is very easy – and understandable – for people to say “that is irrelevant – this is Nepal!” But if you can give an example of a foreign country, preferably with social conditions somewhat similar to Nepal, which has adopted an idea like the one you are pressing for, and it has been successful, this may be persuasive.
- It may be possible to use international law. In the area of human rights (or perhaps the environment – taken into account the international treaties that Nepal has signed) you may be able to argue that what you are suggesting is something that Nepal is already supposed to do because it has signed international agreements. Even then – and even though signing international treaties is an act of choice for a country – some people find this hard to accept. They tend to think of such treaties – especially on human rights – as being “foreign ideas”. But a great deal of thought – and bargaining – goes into making international treaties. They are almost always compromises, rather than extreme views.

Box: Some treaties that Nepal has agreed to be bound by²

The International Covenant on Civil and Political Rights
The International Covenant on Economic, Social and Cultural Rights
The Convention on the Rights of the Child
Convention on the Elimination of Discrimination Against Women
Convention on the Elimination of All Forms of Racial Discrimination
ILO Convention 169 on the Rights of Indigenous Peoples
Framework Convention on Climate Change
Convention on Biological Diversity
Vienna Convention for the protection of the Ozone Layer
Stockholm Convention on Persistent Organic Pollutants

Timing is crucial. When is the best time to put forward ideas?

Broadly there are two phases: before a first draft, and after the first draft. It may be that once there is a full draft constitution it may be hard to introduce fundamental changes; big ideas may have the best chance of acceptance if introduced at an early stage. For example, you might try to get acceptance at an early stage of the importance of having a quota system for legislative seats for women. If it is not there in the first draft it may be hard to change.

But some ideas may be easier to introduce as changes to a draft. You can see what the broad idea is, but propose minor changes – or changes that seem minor. For example, if there is some quota system for seats for women in the legislature in the first draft, it may be possible to refine it and make it more effective.

It is also likely to be easier to introduce ideas into a committee (either directly or through lobbying committee members). This is because committees are smaller and they are also where much of the real work of making the constitution will be done. So it is very important to know which committee or committees is/are relevant for the ideas you want to put across, and to follow their work so that you know when they will be discussing the topic.

You will cause less inconvenience to the administration of the CA if you make your submissions when and how the rules provide. And perhaps your submission will be refused if it does not come at the right time. Anyway if it comes at an inconvenient time it may not get the full consideration it deserves. But, as suggested earlier, don't allow the fact there is no convenient time under the rules, or the moment provided for by the rules has passed, to stop you trying to put forward your ideas.

² If there is a treaty that is particularly relevant to your own area of interest you will find information on the Internet about all of these. For human rights treaties the Office of the High Commissioner for Human Rights has information (and translations into Nepal for most). For the ILO treaty contact the ILO office – which has a translation into Nepali as well as a lot of other information. Another paper in this series will explain more about the relationship between international law like these treaties and the law of an individual country like Nepal.

Stay interested: if you are successful in getting your suggestions accepted, do not assume that they will appear in the final constitution just as you proposed them. A committee might be convinced, but then the idea has to go to the Constitution Committee. Then the draft is to be accepted in principles by the CA before going to the people. Some other members of the public may object to your idea. And even if your idea survives all these hurdles, it may be distorted by the drafters who work on the final legal text: not deliberately, but they may misunderstand. So you must watch at every stage, including the final one. We are not suggesting that you insist that your own words are used: a legal drafter is the best person to understand how words will be understood by a court.

How to prepare a submission to the CA

In Appendix 3 you will find some extracts from real submissions made to constitution making bodies. These are not intended to be copied – but just to give you an idea of what a submission might look like. A few common sense points of advice on preparing a submission:

- Make sure that you understand the issues (including reading the party manifestoes) on the particular topic; especially ensure that you understand what might be the connection between a constitution and what you and your organisation want to achieve.
- Did the 1990 Constitution or the Interim Constitution contain anything relevant? If so, do you want the new constitution to have the same provisions, or are you suggesting changes? If so why? Is there something that did not work well in one of these earlier constitutions?
- Get your facts and figures right. If you are arguing for special constituencies for women, are there countries that have such a provision? Rwanda and Sweden have the highest proportions of women in their legislatures in the world – why is this³?
- If you are using figures, try to ensure you understand what they mean. Statistics can sound very impressive, but it may not be difficult for a skilled questioner to undermine them. Suppose a survey said that 70% of Nepali women believe there should be quotas for legislative seats for women: how many women were questioned? When was the survey done? Make sure your information is from sources that can stand up to inquiry.
- Make your submission as brief and as clear as possible. If it is necessary to have quite a long document, make sure you also have a summary that makes the main points in no more than 2 pages.
- Ideally make your submission in Nepali. Certainly don't submit it in English even if you have received assistance in drafting it in English: this may cause resistance as showing "foreign influence". You might wish to make a submission in another Nepali language, but if possible it would be a wise tactic also to submit in Nepali as there would be a risk that it would not be read by all members. And if there is any question of translation (whether from English or another Nepali language) you want (i) to control that translation to ensure that your meaning gets across to the CA members and (ii) to ensure that the quality of the translation is good. There have been many poor translations between English and Nepali during the whole peace process. Sometimes it is impossible to understand what is meant; sometimes an expert in the

³ One has special constituencies; the other does not!

issue or in constitutions would be able to guess what is meant, but many CA members are not experts – indeed it is perhaps the non-experts you need to convince. Many people do not have patience to try to understand something that is badly written or badly translated.

- Try to make your submission stand out, so that CA members want to read it
- But perhaps avoid producing something very glossy and expensive.
- Should you do mass submissions? By this we mean – should you present a petition signed by a large number of people, or even should you have a postcard campaign, in which many people are asked to sign and send in to the CA pre-printed cards making a few short points? This should be done with great care. There are benefits – including that you could use several languages. But it is very easy for critics to dismiss such campaigns saying that most people who signed did not understand what they were doing. You may have heard that the South African constitutional assembly received 2 million submissions. But many of these were these standard form letters, cards, petitions etc., and they were not taken as seriously as more reasoned documents. A petition with a really large number of signatories may make a big impact, but otherwise the effort may not be worth it.

How to make an oral presentation

You may be able to make an oral presentation (separately from, or in support of, a written submission). This is a great opportunity. But it is a chance that should not be wasted. Again there are a few common sense things to bear in mind:

- Choose a representative who is knowledgeable and persuasive
- Be creative about the possibilities. If you want to make a case for children, should you bring some children to do so? Would a short film help your case (there may already be a film made in Nepal)? Will one articulate individual be best? Would a lawyer be able to convince the CA or its committee?
- Be prepared – know your case, your facts, the responses to possible questions
- Don't exceed the time allowed
- Be respectful – but firm.

Using the media

Earlier in this paper we have talked about why the media may be useful. How should groups with something to say about the Constitution use the media?

It is not always easy to get something into the press. But working with journalists and preparing in advance can help. Perhaps the following points might be useful:

- Make sure that the media know about that you are going to make a submission
- Learn how to prepare an effective press release.

- Give the press something to take a picture of: something that makes a good picture, a photogenic person, a march, a dance, a colourful event.
- And it is important to respect the media as an independent and none political body which are to provide as neutral information as possible.

How to do research

We have said it is important to get your facts right. How do you do this? Give yourself enough time to find things out. There is a lot written about Nepal – social issues, government, economy etc: find out what has been written that is relevant to your case, read it and make use of it. Use the Internet if you have access to it. Use government statistics etc.

‘Between 1988 and 1992, Uganda Constitutional Commission (1) held 86 district seminars, (2) attended educational forms in all 813 sub-counties; (3) returned to each sub-county to collect oral and written memoranda; (4) analysed 25,547 memoranda; and (5) officiated over a student essay contest; (6) organized regular media discussions’.

John Waliggo, ‘The Main Actors in the Constitution Making Process in Uganda’ in Goran Hyden and Denis Ventor (eds), *Constitution Making and Democratisation in Africa* (Pretoria: African Institute of South Africa, 2001) pp. 43-68

Once people have been consulted – how can the results be used?

It is not fair to encourage the people to make their views known if those views are then going to be ignored. Yet processing large numbers of views can be difficult. To some extent it may be possible to use statistics, and even computer processing. For example some constitution making processes have employed a firm, or its own employees, to analyse submissions using computer software, so that it is possible to say that a certain percentage of people take a certain view of a particular issue – e.g. 60% favour a certain institution, 30% are against and 10% don’t know.

This requires considerable expertise, and person power to enter the data. It is also important to carry out what is called “qualitative analysis” that is analysing what people want and why, showing what the reasons are and whether those are good reasons. This requires people with expertise in the topic. And there is always the risk of distortion. So the material should be made generally available; in that way other people could analyse the submissions and ensure that the public views are not being “twisted” for political reasons. There is no reason why various groups could not be involved in analysing the views: the CA itself using experts whom it employs, academics, NGOs etc.

Box: Dealing with a mass of information

If the people are enthusiastic about participating in the making of their country's constitution, there is likely to be a mass of material resulting from public consultation. In many countries there have been tens of thousands of submissions, some in writing, some made orally. How can these be dealt with?

In several countries a constitution commission or similar body has employed specialists in social science methods to analyse the submissions. For example, in Kenya the team analyzing the submissions used a version of a common database program so that they could produce statistical analysis of the submissions, showing how much support there was nationally for various suggestions for the new constitution, which parts of the country favoured particular constitutional provisions, and were able to break down the submissions in terms of the personal characteristics of the people responding (the team was dealing with 36,000 submissions). There was a set of questions that the public were invited to respond to, but all forms of submissions were analysed statistically. Some people made comments on topics not identified by the Commission that developed the questions, so the technical team had to "code" these new issues so that they could be analysed. Anyone could have access to the results of this analysis (though not to the names of the individuals who made the points). The results were provided to the Commission as it prepared the first draft of the constitution. And a report was sent back to each area where the commission held hearings so that the people could see that their community's views were properly represented. Uganda had a somewhat similar system – though not identical.

Analysing the views of the public in this way is time consuming and not cheap (in Kenya a team worked round the clock to enter the data into computers; in Uganda over 100 people were employed to analyse submissions). But if the views are not analysed in a systematic way the input of the public will be much diminished.

Appendices

I A participatory process: the Kenyan example

The process was laid down by an Act of Parliament prepared after round table discussions involving many parties and civil society. The law's dominant objective was a 'people driven' process – a phrase that inspired many, though prompting ridicule from a few. The Act said that the people must be given opportunities to 'actively, freely and meaningfully participate in generating and debating proposals to alter the constitution' (s. 5(c)(i)) and the process was to ensure that the 'final outcome of the review process faithfully reflects the wishes of the people of Kenya' (s. 5)(d)). As far as possible, decisions were to be by consensus.

The process was started by the Constitution of Kenya Review Commission ('CKRC'), appointed by the president on the nomination of Parliament. It provided civic education to the public on constitutional issues (carrying out this task itself and also with the help of civil society organisations already involved in this work). It established constitutional forums (of locally elected leaders) in each of the 210 electoral constituencies to promote discussions on reform and to facilitate consultations with the residents of the constituency. And it appointed a coordinator for, and set up a small library in, each of the 74 districts. The public conducted their own debates and many organizations (some with the assistance of the CKRC) held meetings to prepare their submissions to the CKRC. The CKRC succeeded in generating a nationwide debate on critical issues, and, for several months, constitutional issues dominated the media. The public response was overwhelming. At least one meeting was held in each constituency to receive views. Over 37,000 submissions were received, both from institutions and groups and individuals, ranging from lengthy (and sometimes learned) presentations to a few oral sentences. All oral submissions were recorded, in writing, and on audio and video tape. Interpreters, of spoken and sign language, were available. And summaries of the views were sent back to the locality to check for accuracy. The views were carefully reviewed and analysed by the CKRC which developed a software program for computation and analysis of views. (see previous box)

The draft prepared by the CKRC on the basis of the submissions was then submitted for public consultation and then to the National Constitutional Conference (NCC) which comprised all members of Parliament, three delegates elected from each district, 42 representatives of political parties, and 125 representatives of religious, women's and youth groups, the disabled, trade unions and NGOs – 629 people in all. It was the most representative body ever assembled in Kenya. Its function was to debate, if necessary amend, and adopt the draft constitution presented by the CKRC. Finally, there was the National Assembly ('NA') which was to enact changes to the constitution by formal amendments. The NA was to be assisted in the discharge of its functions in relation to the review by a Parliamentary Select Committee on the Constitution. The NCC was to adopt the provisions of the draft constitution by the votes of two-thirds of all its members, failing consensus. If on any point such a vote was not forthcoming, the provision in question had to be referred to the people in a referendum, and the results of the referendum were to be incorporated in the draft adopted by the NCC, before sending it to the NA. The NA could either approve or reject the draft, but could not modify it.

The referendum was a device to resolve differences among delegates of the NCC, but it was not well thought out, for theoretically a number of provisions could have been submitted to the people, with various options on each. This would have been exceedingly hard to explain to the people, and it would have been almost impossible for the CKRC to incorporate the results of the referendum in the draft as some of the questions were likely to be so fundamental as to require radical surgery or reconstruction. The law was changed to require a referendum only if the NCC agreed by a two-thirds vote to refer the issue to the people. In the event, the NCC was able to adopt a draft without a referendum, thanks to these amendments. [That draft has never been adopted by the NA, however]

II Asking the Right Questions

Principles

Most people will have little idea about what a Constitution is and even less perhaps about what it might be. If only those who do have some good idea are consulted it would obviously be an elite rather than a popular consultation. For this reason it is not feasible to ask very detailed questions about structures and systems of government – at least not to ask them of some groups. It is simply not realistic to expect people to absorb detailed information about structures of government etc and then immediately to express a view about the alternatives.

Certain choices are foreclosed by history, international agreements, financial resources etc. It is not fair – and certainly not democratic – to present people with something as a choice when it is not. If people were invited to express views that stand absolutely no chance of being incorporated into the Constitution, even if they are endorsed by a majority, and then it was apparent that the final draft failed to reflect the wishes of the people this would be an early blow to the legitimacy of the new document.

An important purpose of popular consultation is for the people to feel a sense of responsibility for the constitution. It should be something they recognize as reflecting their own circumstances and wishes, and which they feel some sense of commitment to. This consideration also favours questions which are not very specific about governmental structures. If you have a situation in which large numbers of people express a view in favour of a particular structure or system and the ultimate result is something very different you may have a disillusioned sector of society right from the beginning. Clear cut choices should perhaps be restricted to situations where it really matters.

People may have more sense of what government is than what a constitution is. If questions are phrased in terms of what government ought to be doing for the nation rather than questions of structure the results may be more useful – and less constraining for the drafters.

Again, false hopes ought not to be raised. It is misleading to ask “Do you think that government ought to provide free secondary education?” when there is not the faintest hope of government being able to do this (though in fact this is what the Draft Interim Constitution does!). Questions about social policies etc. could perhaps be phrased in terms of priorities rather than in terms of absolutes.

Certain choices about constitutions are circumscribed by the very nature of a constitution – or by history of the particular country, or even by international factors. In many countries there is no possibility of creating a monarchy. It is unlikely that any country these days would make a constitution saying that women could not vote. And a Bill of Rights will appear in every constitution, and many

of its provisions will resemble those in other countries. Although it is common to hear pleas that the constitution must reflect the culture and background of the particular country, in reality fundamental constitutional innovations are rare. But this does not mean that the people cannot contribute. Take for example the types of government at local levels. For most people the only way in which they come into contact with government in their daily lives is likely to be in their own town or village. They may care far more about how the village is run than how the country is run, and their ideas about the former may be a real contribution. Questions should try to elicit useful information about this sort of issue.

The ultimate responsibility for reflecting the views of the people in constitutional words and structures is that of the technicians and the CA.

These various reflections suggest that the emphasis of questions should be as much as possible on functions rather than on structures. Another emphasis should be on the points of contact between the people and the government. There should not be too many or too detailed questions.

A tactical consideration, however, might be that there could be some questions which would be bound to attract a fairly uniform response, or where there would be no particularly divisive consequences for a decision based on a minority view. For the former I am thinking of something like “Should there be a preamble which sets out the basic aims of the constitution and emphasizes the basis of the nation?” This is a question expecting the answer ‘Yes’. For the latter I am thinking of a question such as “what should be the minimum age for the appointment of the President?” The problem is that these (especially the latter) is very detailed. And it could also be said that this is a bit manipulative – one is asking the people to exercise a choice when it is either a foregone conclusion or it does not matter greatly in the grand scheme of things!

On the other hand, asking these questions does serve an educational function: it will help people realise some of the things a constitution should try to achieve. The point about the age of the President is to achieve a system under which government is effective. People will understand this, when some would find it hard to untangle the implications of having a head of government who is also a member of the legislature, as opposed to having one who is not.

Some suggestions

Here are some suggested questions under largely functional topics.

Representation of the people:

In devising a system to select the representatives of the people to sit in the national Parliament, are any of the following important issues and how important do you think they are:

- That representatives should come from the area they represent and should be familiar with it
- That representatives should keep in touch with those who have elected them between elections
- That the national government should as far as possible reflect the make up of the country – so that if (for example) 10% of the population belong to a certain caste or ethnic group then about 10% of the Parliament should represent that group?
- Would it be possible to operate a system in which voters were asked to rank a certain number of candidates in order (perhaps the voting paper has a list of 10 people and the voter has to put 1 beside his or her first choice, 2 beside the second choice and so on)?

Ensuring that the nation has leaders it can trust:

- Should there be any special qualifications to be able to be President or Prime Minister or other leader (apart from being elected according to the rules)?
- Should such qualifications be in terms of age? Of education? Some other types of qualification?
- Should there be special qualifications to be an MP – like education?

Ensuring the development of the nation:

- Would you like the Constitution to say something about the priorities of government for national development?
- If so, since it is not possible for government to tackle all problems at once, can you make some suggestions about where government should place its major priorities?

Justice

- Is it important that there should be courts of law within reasonably easy reach of everyone in the country?
- If the Constitution was to state some guidelines for the conduct of judges, what would you suggest these should contain?
- Do you believe that it is important for judges to be independent so that they are not influenced in making their decisions?
- What do you think are the main risks to the independence of the judges?
- Are there ways of settling disputes and doing justice in the Nepal context (different from the District Courts etc. that you think ought to be mentioned in the Constitution)?

Participation of the people:

- The people will be involved in the choice of government through elections, but do you believe that there should be ways in which the people are consulted and involved in decisions which affect them in other ways and between elections?
- If so, do you have any suggestions about how this can be done?

Ensuring accountability of government to the people:

- Do you have any suggestions about how the Constitution might ensure that the people (especially people in your own circumstances, where you live etc) are fully informed about what is going on in government?
- If you have complaints about how members of the government or public servants are carrying out their responsibilities, can you complain to anyone? Who do you complain to? Would you wish to see the Constitution make provision for some special institution for this purpose?
- Is there a problem of corruption among public officials? If so – can you say what sorts of situations give rise to the problems of corruption? Should the Constitution set up some special machinery for dealing with this or do you think that the police could deal with it?
- Would you like to see the Constitution contain guidelines for the proper behaviour of

politicians and public servants? If so, do you have any suggestions about important points that should be made?

- Should Parliament as the elected representatives of the people be able to vote to remove the President or the Government between elections?

Place of religion in the constitution:

- Do you believe that the Constitution should state formally that Hinduism is the religion of the nation?
- How should the Constitution deal with the fact that there are many different religions in Nepal?
- If a religious group wants to establish a school should they be able to do so? If so, should they be able to restrict entry to children of that religion?

Bringing government close to the people⁴:

- What do you feel is most important to you: village government or District government?
- Are there ways in which village government and District government could be improved?
- Should there be a system of provincial government?
- How would you want to be able to influence decisions made at the local or provincial level?
- What sorts of matters should be decided at the local or provincial level?

Building and maintaining national unity:

- Should the Constitution contain provisions that try to ensure that at the national level the whole nation is represented – so that all the members of the government are not drawn from a few castes and ethnic groups?
- Should this principle be extended to other institutions such as the public service, the police and the army? Do you have any suggestions as to how it can be achieved?
- Are there other ways in which a good government should try to ensure that everyone in the nation feels fairly treated?

Achieving social justice:

- Are there groups of people within society who you feel are often treated unfairly and who should be specially protected?
- Would you be prepared to see some extra national resources given to help disadvantaged/ weaker sections of society?
- Are there basic rights which you think the Constitution should guarantee to all citizens to ensure a fair and just society?

Women:

- Should the Constitution say anything specific about the role of women in politics and government?

⁴This may be overtaken by decisions about federalism.

- Should it say anything about the needs of women?

Responsibilities of the citizen:

- Would you like to see the Constitution spell out some of the duties of the citizens to each other and to the country?
- If so can you suggest what would be the most important of these?

Symbolizing the nation and its values:

- Would you wish the Constitution to refer to specific features of the history and the values of the country?

And some under more structural headings [note: answers to questions of this sort are meaningless unless there is some sense of why people have particular preferences – though even “it is what we are used to” is a valid reason.

Head of State:

- Assuming that there is to be no King: would you find acceptable the idea of having a President who has few actual powers but performs the role of a symbol of the nation and guardian of the Constitution, while the real powers of government are exercised by the Government and a Prime Minister?
- Alternatively – would you rather have a President who is Head of the Government as well as Head of State and holds a lot of power?

Second chamber:

- If the main house in Parliament consists of Members elected by the people around the country, would you also wish the country to have an upper house of Parliament which could include members elected or appointed in a different way?
- If so – how would you suggest the members of this upper house should be appointed/elected?

Role of Parliament:

- Would you want to see all the members of the Government (Ministers) appointed from among members of Parliament or would you prefer to see all or some of them come from outside Parliament?
- Should Parliament have any role in approving appointment of judges and other high officers of the country?

Parties:

- Do you believe that political parties work for the good of all the people?
- Are there ways in which the constitution should control political parties?
- Should the organisation and financing of political parties be subject to the control of the law to some extent?
- Should it be allowed to have a political party that represents specially the interests of a certain section of the people: like a party for women, or for Buddhists, or for Dalits only etc?
- Should parties be allowed to participate in elections below the level of Parliament (for VDC etc)?

Other suggestions: the Constitution must be made for the people and as far as possible reflect what is important for the people. So – do you have any other suggestions that could improve:

- The lives of ordinary people
- The trust the people have in government
- The effectiveness, the honesty or the reliability of government bodies at all level
- The unity of the country

(It is important not to worry too much about whether your suggestions are the sort of thing that could go into a constitution; it is the work of the CA to try as far as possible to put what the people want into the Constitution).

III Extracts from submissions

This is just part of a submission made on behalf of the women of Uganda, through the Ministry of Women in Development, to the Uganda Constitutional Commission, which reported on 1993. Uganda was drafting a new constitution to replace that of 1967. In the interim many things had happened including coups, military dictatorship and a long period of “no party rule”. This is not put forward as a model, but to show how some women have approached the questions. Various seminars were held first of all to educate women on the nature of a Constitution and then for women to discuss what should be in the new Constitution. The seminars centred around Guidelines for public discussion produced by the Commission.

Here are a few comments:

1. Ideally a major submission ought to be made not by or through a government body but by non governmental organisations, individuals and networks.
2. Para: 3.1 (b) it would not be possible for the constitution to identify all those practices etc. All it could do would be to make them subject to the constitution and leave it to bodies such as the human rights commission and the courts to identify particular practices.
3. National language is an interesting debate. Note that women do not argue that there is a particular “women angle” to this, but nonetheless do have some interesting views. The submission did not restrict itself to issues of particular concern to women as such. This is a good thing – women are citizens as much as men! But the submission did comment that women were more outspoken on issues that directly affected them as women. (You may not know about Uganda’s linguistic situation (it has a number of tribes with their own languages), but you will be able to understand the point. Swahili is widely spoken in east Africa, for historical reasons. It is the mother tongue of people on the East African Coast, but not of any Ugandan community. It is a beautiful language but not as hard to learn as some other languages.)
4. Nepali women will find much in the recommendations on citizenship that strikes a chord. You will find the sensitivity about refugees familiar also perhaps. Uganda has many. Perhaps it would be interesting to research submission from refugee women and other groups that are not ‘traditionally’ well represented in this process.
5. Maybe the women were not clear about the distinction between the constitution and the

“ordinary” laws. They suggest that “the laws” should say that both parents of a child have responsibility for it – do they mean the constitution should say this? Some constitutions have done so. As far as possible, submissions should be clear about what they are suggesting.

6. The suggestion about retaining the exceptions and limitations on human rights in the old constitution, provided they did not ‘give with one hand and take away with the other’ is interesting. Most people in Uganda seem to have felt that the limitations did just that! Every right was limited and “many people believe [the rights] were so much watered down by exceptions as to make them ineffective” (*Report of the Uganda Constitutional Commission: Analysis and Recommendations para. 7.105*). Perhaps the women were cautious here.
7. The report of the Commission did not specifically deal with polygamy or bridewealth, but it did say that customs etc. contrary to the dignity and equality of women should be prohibited by the new Constitution and the laws.⁵
8. On the system of election for President you will see some different suggestions, with some reasons. It is important to give reasons for recommendations. You will see that there is a strong nationalistic sentiment (presumably 3 descents meant 3 generations – of Ugandan ancestors).
9. A number of African countries have outlawed “coups” in their constitutions. This is understandable in the light of experience of military take-overs. In fact such a provision is unnecessary – it is clearly illegal, unconstitutional, to take over by any method other than those in the constitution.

Recommendations by the Women of Uganda to the Constitutional Commission

3. Findings and recommendations

Chapter Three of this report contains Ugandan women's views on the constitution and other related matters of legal status. During the consultations the women of Uganda expressed their gratitude to the NRM Government which established a Ministry of Women in Development and has given continued support to the activities of women by making their concerns national activities.

3.1 The constitution as the supreme law

The women of Uganda recognised the importance of the National Constitution as the Supreme Law of this country. The following recommendations were made:

- a) Women ought to have access to the copy of the new Constitution when it finally comes out.

⁵ Bridewealth is the traditional payment in goods or money from the husband's family to the wife's. There are communities in Nepal that have practiced this, though there has been a trend, influenced by Hindu practices, towards “dowry” which is what the women brings into the family on marriage. This practice is a severe problem in the southern plains of Nepal. Terai is the first area where dowry has become a part of most marriages. However, marriages in the capital, Kathmandu, also have the dowry practices and it is found to a lesser extent in the hill regions. This custom leading towards the expensive marriages and hence, created discriminations to the girl from the poor family. Many women are tortured and killed for not bringing enough dowries every year. Women suffer from domestic violence resulting into mental and physical torture of those who do not or cannot meet the greed of in-laws for dowry. www.hinduismtoday.com/archives/2000/5-6/2000-5-11.shtml and www.nepalnews.com/archive/2009/mar/mar20/news01.php

Women nationwide emphasized the importance of being aware of the provisions contained in the Constitution and of understanding their implications.

- b) All customary laws, practices and religious beliefs that are repugnant, discriminatory, not good for the health of women, or otherwise, undermine the status of women and are contrary to the provisions of the Constitution as a Supreme Law should be outrightly abolished.

3.2 Nation building-national language

(Chapter 3 of the Guidelines)

At 77 country seminars women recognized the importance of having a National language besides the official language, that is, English. Only at four country seminars, one in Masaka district, another in Lira district and 2 others in Mbale district the participants preferred that the official and National language is the same, i.e. English.

However, different recommendations were made on the issue of national language as follows:-

- a) Luganda should be the National language.

Luganda was suggested, primarily by women in the Luganda-speaking areas of the country, that is, Masaka, Luwero, Mubende, Mpigi, Kampala, Mukono (25 county seminars). The argument for choosing Luganda was that Luganda is already widely spoken and understood by a wide range of people from Eastern, Central, Southern and Western regions.

However, Luganda was also suggested by non-Luganda speaking women from Kamuli district. These women argued that Luganda is an easy language to learn and that there are many books available written about it and in the Luganda language.

In addition the majority of the women recommending Luganda said that it is a highly developed and rich language that will help Ugandans to preserve their cultural values. Such values may be difficult to express in other languages, for example in Swahili. Lastly many women advocated for Luganda because it is one of the languages that is taught in schools as a full subject right up to university level.

- b) Swahili should be the National language.

Women at 49 county level seminars in Mbarara, Apac, Lira, Masindi, Bushenyi, Kabale, Mbale, Kasese, Moyo, Tororo, Soroti and Nebbi Districts were in favour of Swahili as the national language. Their argument was that if the main purpose of having a common language for the people of Uganda is to bring unity and create a feeling of national identity, then none of the indigenous languages should be chosen. They found it almost impossible for Ugandans to pick on one of the indigenous languages to be adopted as the national language without arousing the feelings of superiority among the ethnic group which speaks that particular language. Therefore, they recommended Swahili which does not have any cultural bias.

- c) Uganda should adopt several languages at once as the National languages.

These included Luganda and Luo as recommended in Mubende, Mukono and Kamuli Districts (4 county level seminars), or Luganda, Luo and Runyakitara as in Kampala and Masindi Districts (2 county level seminars), or Luganda, Swahili and Luo as in Jinja and Mpigi Districts (3 county level seminars). However, it was noted that it would be an expensive exercise to promote all the

two or three languages at once.

3.3 Citizenship

(Chapter 4 of the Guidelines)

It was noted that our society is patrilineal, that is descent is traced through the male line. However, as women are fighting for equality it was recommended that:-

- a) Where the word 'father' appears in Article 4 of the present Constitution it should be replaced by the phrase "one of the parents";
- b) Our laws should emphasize the fact that a child born to any two persons belongs to both the father and the mother and both have a responsibility of bringing up this child;
- c) Where a child is born in Uganda and its mother is a Ugandan then such a child should automatically be a Ugandan citizen without making an application especially, so where the father and mother of this child do not have any legally binding relationship;
- d) When a child becomes of age, that is, twenty-one years of age, she/he should have the option to decide which citizenship status she/he should retain.

3.4 Fundamental rights and freedoms

(Chapter 5 of the Guidelines)

It was noted that women who attended the constitutional seminars were generally ignorant about their constitutional rights and freedoms contained in Chapter Three of the Constitution of 1967. However, after the educational exercise women had many recommendations on these constitutional rights and freedoms and how they should be protected and respected.

The following recommendations were made:

- a) All the fundamental rights and freedoms stipulated in the Uganda Constitutions of 1967 should be included in the new Constitution of Uganda;
- b) The exceptions and limitations to the rights and freedoms of an individual should also be included in the new Constitution but not to such an extent that "they are given with one and then taken away by the other hand";
- c) Every man and woman in Uganda should have the constitutional right to have basic education. The women stated that Uganda may not presently be in a position to provide such a basic service to its people but plans should be made to provide free primary education to every child, both girls and boys without any preference;
- d) Every woman and man should have the constitutional right to earn a living.

It was emphasized that the new Constitution should protect women against husbands who make it their right to decide whether or not their wives should work for a payment;

- e) Every woman and man should have the constitutional right to have access to medical/health centre-services. Such services should be accessible whenever they are required;
- f) All Government hospitals and health centres should operate at an acceptable standard. Otherwise, the women recommended

3.4.1 Discriminatory legislation

The following recommendations were made:

- a) There should be no discrimination on the basis of sex.

Therefore, Article 20(3) of the Uganda Constitution of 1967 should be amended. The expression 'discriminatory' described therein should also include among others mentioned "....." on the grounds of.....SEX". This they said, means that all provisions contained in

Article 20 (4) (a), (d), (e), (f) and (h) must not appear in the new Constitution.

* Refer to Annex "H" for the provisions of these subsections of Article 20 (4).

(v) Employment regulations:

The following recommendations were made concerning this issue:-

- a) Women should benefit from their contribution to the accumulated household/family income and their contribution should be legally recognized;
- b) Sexual harassment of female employees at their places of work by employers should be a criminal offence and be punished severely;
- c) A family member of a woman who enjoys free medical services at her place of work should benefit from the services as it is in the case of a family of a man who receives such fringe benefits;
- d) Women and men should enjoy equal pay, promotion opportunities and work benefits in the same job with similar qualifications, experience and schedule of duties.
- e) The period of maternity leave should be extended to be at least three or four months irrespective of the type of job.

It was noted that the stipulated period of maternity leave in our employment laws is inadequate, and that the health of a woman is very important to her family as well as to the nation as a whole.

- f) Men should also have an option of paternity leave.

The latter recommendation was made by a few women from Nebbi District.

2.4.2 Children's rights

The women of Uganda recognized that children, both girls and boys, are very important to the future of this country. They therefore, recommended that:-

- a) All children should have access to adequate health care, education opportunities, and other social services;
- b) In cases of child abuse, rape and other forms of sexual harassment it must be guaranteed that the award given by the court benefits the victim and not any other person, for example the father or guardian of the child;
- c) In the event of divorce, separation or death of a husband, the children should remain in the custody of their mother if she is of well and sound mind and if they are under 18 years.

However, if a child is twelve years old and above she/he should have the right to decide with which parent he/she prefers to stay.

- d) All the ideas or the rights and obligations of children that have Right of a Child should be adopted and incorporated in the new Constitution. More specific provisions concerning these rights and obligations should be incorporated in other legislations.
- e) Family cases and those of child abuse should be heard in camera.
- f) All discriminatory legislation in our law books should be repealed and replaced with more up-to-date legislations that are not discriminating against women.

The following areas of the Law were identified as the ones under which the majority of women have continued to suffer injustices because of the discriminatory provisions contained therein:-

- (i) Marriage Laws;
- (ii) Divorce Laws;
- (iii) Inheritance Laws and Property Rights;
- (iv) Employment Regulations.

(i) Marriage laws

The following recommendations were made:

- a) There should not exist a multiplicity of types of marriages that are governed by different legislation.
- b) Government should put in place constitutional institutions that are accessible to an ordinary woman and man in Uganda to enable them understand the rights and duties that arise from each particular type of marriage contract.

It was noted that the existence of numerous types of marriages and legislations that govern them is confusing.

- c) A majority of the women who participated in the constitutional seminars recommended that a man should have one wife, and a woman one husband. Monogamous marriages should thus be promoted and the Government should create awareness among the women and men of Uganda about the evils of polygyny.

It was emphasized that a man should be made to understand that he does not have the right to get another wife without terminating the first marriage or obtaining the consent and approval of his wife or wives. Women noted that there is a lot of suffering in polygynous homes because the man cannot love his wives equally and usually he does not have enough to provide sufficient support to his wives and numerous children. This leaves a heavy burden on the women. This was the opinion of many women from Mbarara, Kapchorwa, Masaka, Arua and Nebbi, Bushenyi and Tororo Districts.

- d) Women at various seminars throughout the country recommended that with the present scourge of AIDS polygynous unions should be outlawed by the new Constitution.
- e) Customary marriages which confer unequal marital rights to the parties Involved are unconstitutional and should be discouraged.

It was noted that customary marriages do not provide enough legal security for the female partners(s), but in fact undermine the legal status of women, because they are substantially polygynous.

(ii) Bridewealth

Many comments were made on the customary practice of exchanging bridewealth. It was stated that in the past bridewealth had a certain symbolic significance representing the sealing of a union between the bride's and bridegroom's families. However, the attitude towards bridewealth has changed and in the recent past it has increasingly become a cash payment primarily made to the father of the bride.

There were two major recommendations on the issue of bridewealth, a) and b):-

a) Bridewealth should be abolished as unconstitutional

This recommendation was put forward by women from Mukono, Luwero, Jinja, Kampala, Kamuli, Mbale, Nebbi, Mbarara, Bushenyi, Kabarole, Kasese, Tororo and Moyo Districts. Women from these districts pointed out that bridewealth undermines the status of women and often implies that men believe they have the right to treat their wives as slaves, or property or ornaments purchased. Thus many men who have paid bridewealth subject their wives to inhuman treatment. The example given was the habit of wife beating which is contrary to Article 11 (1) and 12 (1) of the Constitution of 1967.*

* Article 11 (1) "No person shall be held in slavery or servitude.

* Article 12 (1)" No person shall be subjected to torture or inhuman or degrading punishment or other like treatment".

b) The practice of exchanging bridewealth should be preserved, but the amount payable by any person should be regulated by law enacted by the people of each area which support the continuance of the practice to avoid exploitation and promotion of the greedy attitude of parents.

This was mainly supported by women from Kabale, Apac, Arua and Lira Districts, and by some women from Mbarara (3 counties), Mbale (one county) and Nebbi (one county) Districts.

c) The Government and all other organizations concerned with uplifting the status of women should create awareness among the women, men and children about the disadvantages of the practice of exchanging bridewealth.

It was noted at the majority of seminars throughout the country that outright abolition of the practice of exchanging bridewealth by law is not realistic. Furthermore, women were optimistic that with the social and economic changes taking place in Uganda the practice shall slowly fade out with time.

3.9 Electoral system

(Chapters 12, 13 and 14 of the Guidelines)

Women recognized the importance of the people of Uganda to have the power to choose their leaders. They recommended the following:-

a) For any person to qualify to be the President of Uganda she/he should have the following basic qualifications:-

- (i) She/he must be an indigenous Ugandan of three descents;
- (ii) She/he must be within the age range of 35-70 years;

Furthermore, the majority of women preferred:

- (iii) A presidential candidate to be a degree-holder in political science or administration, or economics, or to have a legal background.

Some women from Luwero, Arua and Nebbi Districts, however, recommended the following:

- (iv) Possible Presidents in Uganda should not be confined to degree holders, but must be women or men with a certain level of education, for example senior six level, and with at least five years of experience in politics;
- (v) She/he must have a good family background and with no criminal record;
- (vi) She/he must be a legally married woman/man.
- (vii) She/he must have proved capable of organizing national affairs;
- (viii) She/he must have a permanent home in Uganda and the properties which she/he owns in Uganda must have been legally acquired.

On the issue of electing a President the women expressed two different opinions b) and c):-

- b) A President should be elected by the people through direct presidential elections; Supporters of the above proposal (b) included women from Mbale, Mukono, Moyo, Mbarara, Mpigi, Nebbi etc. They expressed fear that a candidate for the Presidency may easily corrupt or mislead a smaller group of members of Parliament. The women argued that it encourages democracy if people are given the chance to vote for their President. They recommended that there should be at least two or three candidates to contest for the presidency and not one. Voting should be by secret ballot.
- c) The members of Parliament should be given the duty and responsibility to elect the President from among themselves in the new Constitution.

The women who supported the latter proposal (c) included women from Kampala and Mubende Districts. They argued that having two sets of elections, that is, the presidential elections, and elections for members of Parliament will be too expensive an exercise for a country like Uganda. They recommended that members of Parliament should be entrusted with the duty of electing a President because they represent the people of Uganda in the National Assembly.

Finally,

- d) The new Constitution should outlaw the possibility of any person obtaining legitimacy in power after establishing herself/himself as President of Uganda by use of force.